



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 13 2013** Office: ROME, ITALY

FILE: [Redacted]

IN RE: [Redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Acting District Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Cuba who was paroled into the United States on June 23, 1987. The applicant then applied for asylum, but withdrew his application and was ordered deported from the United States on March 13, 1997. On March 27, 2007, the applicant departed the United States, thereby self-executing his deportation order. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his U.S. citizen parents and children.

In a decision, dated August 2, 2011, the field office director found that there would be no purpose in granting the applicant's application for permission to reapply for admission as he was not eligible for a waiver of his inadmissibility under section 212(a)(9)(B) or section 212(h)(1)(A) of the Act. However, the acting field office director also found that the adverse factors in the applicant's case outweighed the positive factors and denied the application accordingly.

On appeal, counsel states that the positive factors in the applicant's case outweigh the negative factors and that the appeal should be considered pending the appeal of the applicant's waiver application.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. As the applicant has been found inadmissible under section 212(a)(9)(B)(i) of the Act, and his appeal of the denial of his waiver application for this ground of inadmissibility denied in a separate decision, no purpose is served in adjudicating the applicant's Form I-212.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.